

1 Debbie P. Kirkpatrick, Esq. (SBN 207112)  
2 SESSIONS, FISHMAN & NATHAN IN CALIFORNIA, L.L.P.  
3 3667 Voltaire Street  
4 San Diego, CA 92106  
5 Tel: 619/758-1891  
Fax: 619/222-3667  
dpk@sessions-law.biz

6 Attorney for NCO Financial Systems, Inc.

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 TABITHA BALVINA KNIESCH, } Case No.: C07-03398 RMW PVT  
12 Plaintiff, }  
13 } ANSWER OF NCO FINANCIAL  
14 vs. } SYSTEMS, INC. TO COMPLAINT  
15 NCO FINANCIAL SYSTEMS, INC., a }  
16 Pennsylvania corporation, }  
17 Defendant. }  
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19  
20 Defendant, NCO Financial Systems, Inc. (hereinafter “NCO”), for itself alone,  
21 responds to the complaint filed by plaintiff, TABITHA BALVINA KNIESCH, as  
22 follows:

23 I. INTRODUCTION

24 1. NCO admits that plaintiff purports to seek redress for violations of the Fair  
25 Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Rosenthal  
26 Fair Debt Collection Practices Act (“RFDCPA”), California Civil Code § 1788, *et seq.*,

1 as alleged in ¶ 1 of the Complaint, but denies violating the FDCPA or RFDCPA and  
 2 denies any liability or wrongdoing under the law.

3 **II. JURISDICTION**

4 2. NCO admits the allegations contained in ¶ 2 for jurisdictional purposes  
 5 only.

6 3. NCO denies the allegations contained in ¶ 3 of the Complaint.

7 **III. VENUE**

8 4. NCO admits the allegations contained in ¶ 4 for venue purposes only, but  
 9 specifically denies violating the FDCPA or RFDCPA and denies any liability or  
 10 wrongdoing under the law.

11 **IV. INTRADISTRICT ASSIGNMENT**

12 5. NCO lacks sufficient information to answer the allegations contained in ¶ 5,  
 13 and based thereon denies the same. NCO specifically denies violating the FDCPA or  
 14 RFDCPA and denies any liability or wrongdoing under the law.

15 **V. PARTIES**

16 6. NCO lacks sufficient information to answer the allegations contained in ¶ 6,  
 17 and based thereon denies the same.

18 7. NCO admits that when it acts as a debt collector as defined by 15 U.S.C. §  
 19 1692a(6) or Cal. Civil Code § 1788.2(c) its conduct may be governed by the applicable  
 20 provisions of those statutes. NCO further admits it engages in the business of debt  
 21 collection and that its principal business is debt collection related services. NCO further  
 22 admits the address of its principal place of business and its agent for service of process is  
 23 as stated in ¶ 7 of the Complaint. Except as expressly admitted, NCO denies the  
 24 remaining allegations contained in ¶ 7.

25 **VI. FACTUAL ALLEGATIONS**

26 8. NCO lacks sufficient information to answer the allegations contained in ¶ 8,  
 27 and based thereon denies the same.

1       9. NCO admits that on or about December 6, 2006, American Express placed  
 2 plaintiff's account with NCO for collection. Except as specifically admitted, NCO denies  
 3 the remaining allegations contained in ¶ 9.

4       10. NCO admits its records reflect that telephone calls were made to plaintiff  
 5 on or about December 7, 2006. Except as specifically admitted, NCO lacks sufficient  
 6 information to answer the remaining allegations contained in ¶ 10 of the Complaint and  
 7 based thereon denies the same.

8       11. NCO admits its records reflect that telephone calls were made to plaintiff  
 9 on or about December 7, 2006. Except as specifically admitted, NCO lacks sufficient  
 10 information to answer the remaining allegations contained in ¶ 11 of the Complaint and  
 11 based thereon denies the same. To the extent an admissible recording exists, said  
 12 recording is the best evidence of its content.

13      12. NCO denies the allegations contained in ¶ 12 of the Complaint.

14      13. NCO denies the allegations contained in ¶ 13 of the Complaint.

15      14. NCO denies the allegations contained in ¶ 14 of the Complaint.

16      15. NCO denies the allegations contained in ¶ 15 of the Complaint.

17      16. NCO denies the allegations contained in ¶ 16 of the Complaint.

18      17. NCO denies the allegations contained in ¶ 17 of the Complaint.

## VII. CLAIMS

### **FAIR DEBT COLLECTION PRACTICES ACT**

21      18. NCO admits that plaintiff brings his first claim under the Fair Debt  
 22 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, but NCO denies violating  
 23 the FDCPA and denies any liability or wrongdoing under the law.

24      19. NCO incorporates its responses in the foregoing paragraphs as though fully  
 25 set forth herein.

26      20. NCO lacks sufficient information to answer the allegations contained in ¶  
 27 20, and based thereon denies the same.

1       21. NCO admits that when it acts as a debt collector as defined by 15 U.S.C. §  
 2 1692a(6), its conduct may be governed by the applicable provisions of that statute.

3 Except as specifically admitted, NCO denies the remaining allegations contained in ¶ 21.

4       22. NCO lacks sufficient information to answer the allegations contained in ¶  
 5 22, and based thereon denies the same.

6       23. NCO denies the allegations contained in ¶ 23 of the Complaint, including  
 7 subparagraphs a. and b.

8       24. NCO denies the allegations contained in ¶ 24 of the Complaint, including  
 9 subparagraphs a. through d., inclusive.

10      25. NCO denies the allegations contained in ¶ 25 of the Complaint.

11      26. NCO denies the allegations contained in ¶ 26 of the Complaint and further  
 12 specifically denies plaintiff is entitled to damages in any amount whatsoever.

### 13           **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

14      27. NCO admits that plaintiff brings his second claim under the Rosenthal Fair  
 15 Debt Collection Practices Act (“RFDCPA”), California Civil Code §§ 1788-1788.33, but  
 16 NCO denies violating the RFDCPA and denies any liability or wrongdoing under the law.

17      28. NCO incorporates its responses in the foregoing paragraphs as though fully  
 18 set forth herein.

19      29. NCO lacks sufficient information to answer the allegations contained in ¶  
 20 29, and based thereon denies the same.

21      30. NCO admits that when it acts as a debt collector as defined by Cal. Civil  
 22 Code § 1788.2(c), its conduct may be governed by the applicable provisions of that  
 23 statute. Except as specifically admitted, NCO denies the remaining allegations contained  
 24 in ¶ 30.

25      31. NCO lacks sufficient information to answer the allegations contained in ¶  
 26 31, and based thereon denies the same.

32. NCO denies the allegations contained in ¶ 32 of the Complaint, including subparagraphs a. and b.

33. NCO denies the allegations contained in ¶ 33 of the Complaint, including subparagraphs a. through d., inclusive.

34. NCO denies the allegations contained in ¶ 34 of the Complaint.

35. NCO denies the allegations contained in ¶ 35 of the Complaint and further specifically denies plaintiff is entitled to damages in any amount whatsoever.

36. NCO denies the allegations contained in ¶ 36 of the Complaint and further specifically denies plaintiff is entitled to damages in any amount whatsoever.

37. NCO denies the allegations contained in ¶ 37 of the Complaint and further specifically denies plaintiff is entitled to damages in any amount whatsoever.

38. NCO denies the allegations contained in ¶ 38 of the Complaint and further specifically denies plaintiff is entitled to damages in any amount whatsoever.

39. NCO avers that the statute cited in ¶39 of the Complaint speaks for itself and therefore no response from NCO appears to be required, and refers all matters of law to the court.

## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE

As a first affirmative defense, NCO alleges plaintiff's Complaint should be dismissed because the various causes of action fail to state claims upon which relief can be granted.

## SECOND AFFIRMATIVE DEFENSE

As a second affirmative defense, NCO alleges, pursuant to 15 U.S.C. § 1692k(c), to the extent that a violation(s) is established, any such violation(s) was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such error.

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### THIRD AFFIRMATIVE DEFENSE

As a third affirmative defense, NCO alleges, pursuant to California Civil Code § 1788.30(e),, to the extent that a violation(s) is established, any such violation(s) was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such error.

WHEREFORE, NCO respectfully requests that:

1. Plaintiff take nothing by way of her Complaint;
  2. Judgment of dismissal be entered in favor of NCO;
  3. NCO be awarded costs and attorney's fees it has incurred in defending this lawsuit.
  4. NCO be granted such other and further relief as the Court deems just and proper.

Dated: August 3, 2007

SESSIONS, FISHMAN & NATHAN IN CALIFORNIA, L.L.P.

/s/ Debbie P. Kirkpatrick  
Debbie P. Kirkpatrick  
Attorney for Defendant  
NCO Financial Systems, Inc.